*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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+WRIT PETITION No.29729 of 1995

% Dated 05-01-2007

Mohd. Sadiq Ali.

Petitioner

VERSUS

$ The Presiding Officer,
Labour Court, Godavarikhani,
Karimnagar District & another.

Respondents

! Counsel for Petitioner: Mr. Y. Ashok Raj.

^Counsel for Respondent No.1: Government Pleader for Labour.
Counsel for Respondent No.2: Smt. P. Rajani Reddy

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> HEAD NOTE:

? Cases referred

1. AIR 1963 SC 1728
2. AIR 1975 SC 2151
3. (2005) 3 SCC 254
4. (1995) 6 SCC 750
5. AIR 1997 SC 2286
6. (2000) 1 SCC 416
7. (1997) 7 SCC 463
8. (1995) 6 SCC 749
9. (2005) 7 SCC 338

10. (2006) 2 SCC 541

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 29729 of 1995

Dated: 05.01.2007

Between:

Mohd. Sadiq Ali

… Petitioner

AND

The Presiding Officer,
Labour Court, Godavarikhani,
Karimnagar District & another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 29729 of 1995

ORDER:-

This writ petition is filed questioning the Award dated 17.02.1995 of the 1st respondent - Labour Court, Godavarikhani, Karimnagar District (for short "the Labour Court") in I.D.No.2 of 1993 and for consequential direction to respondent No.2 to reinstate the petitioner into service with back wages and all other benefits.

The facts briefly summarized are as under:

The petitioner was a driver working with the 2nd respondent. Departmental proceedings were initiated against the petitioner in respect of an incident involving him on 21.02.1992 while he was on duty. After preliminary enquiry, a charge sheet was issued to the petitioner, comprising a solitary charge, which reads as under:

> "For having consumed liquor and broken the shutter glass of the bus No.AP 9Z 201 while you were performing duties at Medaram Jatara on 21.02.1992."

The petitioner submitted his explanation denying the charge. He pleaded in his explanation that he along with his co-driver, who is on duty in respect of vehicle No.AP 9Z 201 on route Manthini to Madaram, started on 21.02.1992 from Manthini; his co-driver S.B.Salam was driving the vehicle from Manthini to Rajaram; while the petitioner slept in the bus as he was not feeling well, suffering from stomach pain; while the bus reached Ghanpur "road up-trip", he tried to open the shutter door for free air, but the shutter was not opened as it was tightly fitted and that he used a rod from the tool box and opened the shutter glass; while doing so, two glasses of window shutters were broken and that after coming to Ghanpur, he was withdrawn from duty by a duty supervisor. The petitioner denied having consumed alcohol while performing the duty.

Not being satisfied with the explanation offered by the petitioner, an Enquiry Officer was appointed, who after examining the witnesses by recording their evidence submitted enquiry report dated 18.07.1992. The 2nd respondent after considering the explanation submitted by the petitioner, removed him from service vide his order dated 11.09.1992. Thereafter, the petitioner raised an industrial dispute, which was registered as I.D.No.2 of 1993 before the Labour Court. The Labour Court, by its award dated 17.02.1995, declined to interfere with the order of removal passed against the petitioner. Questioning the said Award, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the Andhra Pradesh State Road Transport Corporation.

The learned counsel for the petitioner submitted that the penalty

of removal of the petitioner from service, imposed by the 2nd respondent and confirmed by the Labour Court, is not sustainable in law. He contended that Sri S.B. Salam, Co-driver, who was an eyewitness to the alleged incident and Sri Sd.Sadiq Ali, Assistant Depot Clerk, whose statements were recorded in the preliminary enquiry, resiled from their earlier statements of the enquiry and that therefore the 2nd respondent and the Labour Court have erroneously relied upon their statements made in the preliminary enquiry. He further contended that as the only eyewitness viz., Sri S.B. Salam did not testify in the enquiry to the misconduct of the petitioner, the penalty imposed on the petitioner on the basis of the evidence of other witnesses, who have not witnessed the incident, cannot be sustained in law. The learned counsel also contended that in any view of the matter, the punishment of removal from service is disproportionate to the gravity of offence.

Per contra, the learned Standing Counsel contended that though the Co-driver and Assistant Depot Clerk, whose statements were recorded during the preliminary enquiry, changed their versions in the enquiry, there is evidence of other witnesses available on record from which it can be reasonably concluded that the petitioner is guilty of the misconduct alleged against him and that therefore the finding of the 2nd respondent as confirmed by the Labour Court, holding the petitioner guilty of misconduct, cannot be said to suffer from any illegality or infirmity, warranting interference by this Court. The learned Standing Counsel further contended that having regard to the serious misconduct committed by the petitioner, it cannot be said that the punishment of removal imposed on the petitioner is disproportionate to the gravity of misconduct.

From the material available on record, it is evident that on 21.02.1992, the petitioner along with his Co-driver, S.B. Salam, were on duty in respect of bus No.AP 9Z 201 performing service between Madaram and Manthini. It is not in dispute that for the entire distance, S.B. Salam drove the vehicle while the petitioner remained in the bus. It is also not in dispute that he broke the windowpanes of the bus. The only dispute was whether the petitioner consumed alcohol and broke the windowpanes in ilabrated condition, without performing his duty as a driver.

In the preliminary enquiry conducted by the Assistant Manager (P) of Jagtial Depot, the statements of S.B. Salam, Co-driver, Sd.Sadiq Ali, Assistant Depot Clerk, Sri V.C.Prakash, Conductor and Sri M.Thukkaiah, Conductor, working in Jagtial Depot, were to the effect that the petitioner, in a drunken condition broke the window panels and was not in a position to perform his duty. In the regular enquiry too all these persons were examined as witnesses. The Co-driver, S.B. Salam and Sd. Sadiq Ali, Assistant Depot Clerk resiled from their earlier statements by deposing that they have not seen the petitioner in a drunken condition. However, Sri Thukkaiah, Conductor of Jagtial depot and Sri G.Sambaiah, Deputy Superintendent (T) reiterated their statements made in the preliminary enquiry. The evidence of G. Sambaiah, Deputy Superintendent (T) was to the effect that on 21.02.1992 at about 5-30 p.m., S.B. Salam, driver of the bus in question told him that his Co-driver (the petitioner) consumed alcohol at Manthini at 10-30 hrs and that he alone drove the vehicle from Manthini to Madaram; at Ghanpur cross road the petitioner broke the left side shutter glasses of the bus and on that the witness has taken the written statement from S.B. Salam to that effect which was signed

by some of the employees available at the spot as witnesses and that the petitioner was immediately withdrawn from the service and kept in the depot spare under a report submitted to Divisional Manager, Jagtial Depot. Sri M.Thukkaiah, Conductor of Jagtial depot deposed to the effect that on 21.02.1992 while he was performing booking and despatch duty at Madaram point, the bus in question was taken back from Manthini to Madaram by S.B. Salam; as there was heavy traffic towards Husnabad, the Depot Manager and AMT instructed him to bring the vehicle to platform immediately; when he went to the bus where he found S.B. Salam sitting on the seat and when he asked the former to proceed to Husnabad, he expressed his difficulty saying that he operated the trip from Manthini to Madaram and was unable to perform any more trips without rest; S.B. Salam informed him that his Co-driver (the petitioner) was sleeping in the bus and he was not in a normal condition as he consumed alcohol in Manthini; on the instructions of D.M. and ADC, the petitioner was taken to the camp meant for Jagtial staff at Madaram duly withdrawing him from service. The witness further added that the petitioner was not in a normal condition and another driver was arranged for operation of jatara service.

The enquiry officer, despite S.B. Salam and Sd. Sadiq Ali resiling from their statements made in the preliminary enquiry, relied on the evidence of G. Sambaiah and M. Thukkaiah, Deputy Superintendent (T) and Conductor of Jagtial depot respectively in coming to the conclusion that the charge framed against the petitioner was proved. The Labour Court delved deep into the evidence and held that though the Co-driver and Assistant Depot Clerk went back on their earlier statements made in the preliminary enquiry, still the evidence

available on record was sufficient to hold the petitioner guilty of the charge.

The law on the scope of judicial review in disciplinary cases is well settled. In **STATE OF A.P. v SREE RAMA RAO**[1], the Supreme Court held that the High Court will not act as an appellate Court in examining the correctness of the orders passed in the disciplinary proceedings. It is further held that where the authority entrusted with the duty to hold the enquiry has accepted the evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, an order of punishment passed on such evidence cannot be interfered with. The Supreme Court reiterated this principle in **STATE OF A.P. AND OTHERS v CHITRA VENKAT RAO**[2]. In a catena of subsequent judgments, this principle is reiterated and one of the recent judgments being that of the Supreme Court in **DIVISIONAL CONTROLLER, K.S.R.T.C., (N.W.K.R.T.C.) v A.T.MANE**[3].

Applying the aforementioned ratio to the present case, the only question falling for consideration in this writ petition is whether the finding of the guilt recorded against the petitioner is based on the evidence, which may reasonably support the said finding?

As discussed above, at the earliest point of time Sri M.Thukkaiah, Conductor of Jagtial Depot unequivocally stated that the petitioner's Co-driver S.B. Salam informed him about the drunken condition of the petitioner and that he entered the bus and saw the petitioner lying in the bus in a drunken state. Sri G.Sambaiah, Deputy Superintendent (T), on the complaint of the co-driver S.B.Salam, prepared the written statement, which was signed by Salam and other

persons available at that place. They were consistent in their stand both in the preliminary enquiry and also in the regular departmental enquiry. As rightly found by the Labour Court it was quite probable that S.B. Salam, co-driver and Sd. Sadiq Ali, Assistant Depot Clerk, would have been won over by the petitioner.

In **B.C. CHATURVEDI v UNIONOF INDIA**[4] and **HIGH COURT OF JUDICATURE AT BOMBAY v UDAYSINGH AND OTHERS**[5] the Supreme Court held that unlike in a criminal case, proof beyond reasonable doubt is not a requirement in the disciplinary proceedings and that a person can be held guilty of misconduct on the basis of preponderance of probabilities. The said view is reiterated in **HIGH COURT OF JUDICATURE AT BOMBAY v SASHIKANT S.PATIL AND ANOTHER**[6].

In the light of the aforementioned settled legal principles, the 2nd respondent and the Labour Court are justified in holding that the petitioner is guilty of the charge framed against him, as the evidence on record reasonably supports the said conclusion.

As regards the contention that the punishment imposed on the petitioner is too disproportionate, having carefully considered the entire case, I find myself in agreement with the learned counsel for the petitioner. The Supreme Court held that once an employee is found guilty of misconduct, the Courts/Tribunals would not substitute their opinion on the quantum of punishments, merely because they come to a different view. The Supreme Court, however, recognized an exception to this general rule that where it is found that the punishment imposed is too disproportionate to the gravity of the misconduct proved

that, it shocks the judicial conscience, the penalties imposed in such cases can be interfered with. This view is well settled in the judgments of the Apex Court in **UNION OF INDIA AND ANOTHER v G.GANAYUTHAM**[7], **B.C. CHATURVEDI** (4 supra), **OMKUMAR vs UNION OF INDIA**[8], **V.RAMANA v APSRTC**[9], **DIVISIONAL CONTROLLOR, K.S.R.T.C. (N.W.K.R.T.C) v A.T.MANE** (3 supra), **RAM SARAN v I.G. OF POLICE, CRPF AND ANOTHER**[10].

In the instant case, there cannot be any dispute that drunkenness while on duty is a serious misconduct. However, the 2nd respondent as well as the Labour Court failed to consider the extenuating circumstances present in this case. There is neither a charge nor is it brought out on record that the petitioner was in the regular habit of being in drunken state while on duty. Further, the petitioner in a drunken state has not driven the vehicle, posing any threat to the lives of the passengers. In the absence of any allegation that the petitioner is a habitual drinker, the inference drawn by the Labour Court that his continuance in the service would endanger the lives of the passengers is not justified. The past record of the employee is certainly a relevant factor for consideration in judging the quantum of punishment. As there is nothing on record to suggest that the petitioner's past conduct is bad, the punishment of removal is certainly too harsh and disproportionate to shock the judicial conscience.

For these reasons, I feel it appropriate that the Labour Court should reconsider the quantum of punishment imposed on the petitioner, as it is vested with such a power under Section 11(A) of the Industrial Disputes Act, 1947. Accordingly, while confirming the Award of the Labour Court to the extent of the finding on the misconduct of the

petitioner, the writ petition is allowed only to the extent of imposition of punishment of removal on the petitioner and that part of the award of the Labour Court is set aside. The matter is remitted to the Labour Court for reconsideration of the punishment to be imposed on the petitioner, in the light of the observations made hereinabove.

The writ petition is partly allowed to the extent indicated above.

As the dispute is pending for a number of years, it is just and proper that the Labour Court shall dispose of the case within three months from the date of receipt of a copy of this order after giving notice to the parties.

C.V. NAGARJUNA REDDY, J

Date: 05.01.2007.
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Note: LR copy to be marked.

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[1] AIR 1963 SC 1728
[2] AIR 1975 SC 2151
[3] (2005) 3 SCC 254
[4] (1995) 6 SCC 750
[5] AIR 1997 SC 2286
[6] (2000) 1 SCC 416
[7] (1997) 7 SCC 463
[8] (1995) 6 SCC 749
[9] (2005) 7 SCC 338
[10] (2006) 2 SCC 541